

HOUSE No. 2498

By Mr. Larkin of Pittsfield, petition of Peter J. Larkin for legislation to extend the investment tax credit to leasing corporations. Revenue.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE INVESTMENT TAX CREDIT FOR LEASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (a) of section 31A of chapter 63 of the
2 General Laws, as appearing in the 1998 Official Edition, is hereby
3 amended by striking out the second paragraph and inserting in
4 place thereof the following paragraph:—

5 A manufacturing corporation, or business corporation engaged
6 primarily in research and development, which has been deemed to
7 be such under section thirty-eight C or forty-two B, or a corpora-
8 tion primarily engaged in agriculture or commercial fishing, shall
9 be allowed a credit against its excise due under this chapter for
10 tangible personal property leased pursuant to an operating lease as
11 hereinafter provided. The amount of such credit afforded to a
12 lessee corporation with respect to such tangible personal property
13 shall be one percent of the lessor's adjusted basis in the property
14 at the beginning of the lease term, multiplied by a fraction the
15 numerator of which shall be the term of such lease measured in
16 years, and the denominator of which shall be the useful life of
17 such property. When determining adjusted basis, useful life shall
18 be the same as that used by the lessor for IRC section 168 (c)
19 depreciation purposes, using the straight line method of deprecia-
20 tion with a half-year convention. An operating lease shall be any
21 contract or agreement to lease or rent or for a license to use such
22 property provided that (i) said lease does not constitute a pur-
23 chase, (ii) such property is not taxable under chapter sixty A, (iii)
24 such property is used by the lessee corporation in the common-

25 wealth, (iv) such property is situated in the commonwealth on the
26 last day of the taxable year and (v) such property (1) is depre-
27 ciable by the lessor under section one hundred and sixty-seven of
28 said Code and has a useful life of four years or more, or (2) is
29 considered recovery property under section one hundred and
30 sixty-eight of said Code. The commissioner shall by regulation
31 require such documentation of the lessor and lessee as to substan-
32 tiate the credit claimed by this section.

1 SECTION 2. Section 31A of said chapter 63, as appearing in
2 the 1998 Official Edition, is hereby further amended by striking
3 out paragraph (e) and inserting in place thereof the following
4 paragraph:—

5 (e) with respect to property which is disposed of or ceases to be
6 in qualified use prior to the end of the taxable year in which the
7 credit is to be taken, the amount of the credit shall be that portion
8 of the credit provided for in paragraph (a) which represents the
9 ratio which the months of qualified use bear to the months of
10 useful life. If property on which credit has been taken is disposed
11 of or ceases to be in qualified use prior to the end of its useful life
12 the difference between the credit taken and the credit allowed for
13 actual use must be added back as additional taxes due in the year
14 of disposition; provided, however, if such property is disposed of
15 or ceases to be in qualified use after it has been in qualified use
16 for more than twelve consecutive years, it shall not be necessary
17 to add back the credit as provided in this paragraph the amount of
18 credit allowed for actual use shall be determined by multiplying
19 the original credit by the ratio which the months of qualified use
20 bear to the months of useful life. For the purposes of this para-
21 graph, useful life of property shall be the same as that used by the
22 corporation for depreciation purposes when computing federal
23 income tax liability. For purposes of this section, leased property
24 is disposed of or ceases to be in qualified use when the property is
25 removed from Massachusetts, the lease term expires or the lease is
26 terminated by the lessor or lessee. When leased property is dis-
27 posed of ceases to be in qualified use, the difference between the
28 credit taken and the credit allowed for actual use must be added
29 back as additional taxes due in the year of disposition by the
30 lessee in accordance with the provisions of this section. The

31 amount of tax added back will be computed by reference to the
32 adjusted basis of the property, using the straight line method of
33 depreciation with a half-year convention under the useful life pre-
34 scribed by IRC section 168 (c).

1 SECTION 3. Subsection (i) of said section 31A of said chapter
2 63, as appearing in the 1998 Official Edition, is hereby further
3 amended by striking out the second paragraph and inserting in
4 place thereof the following paragraph:—

5 A manufacturing corporation or a business corporation engaged
6 primarily in research and development, which has been deemed to
7 be such under section thirty-eight C or forty-two B, or a corpora-
8 tion primarily engaged in agriculture or commercial fishing, shall
9 be allowed a credit against its excise due under this chapter for
10 tangible personal property leased pursuant to an operating lease as
11 hereinafter provided. The amount of such credit afforded to a
12 lessee corporation with respect to such tangible personal property
13 shall be three percent of the lessor's adjusted basis in the property
14 at the beginning of the lease term, multiplied by a fraction the
15 numerator of which shall be the term of such lease measured in
16 years, and the denominator of which shall be the useful life of
17 such property. When determining adjusted basis, useful life shall
18 be the same as that used by the lessor for IRC section 168 (c)
19 depreciation purposes using the straight line method with a half-
20 year convention. An operating lease shall be any contract or
21 agreement to lease or rent or for a license to use such property
22 provided that (i) said lease does not constitute a purchase,
23 (ii) such property is not taxable under chapter sixty A, (iii) such
24 property is used by the lessee corporation in the commonwealth,
25 (iv) such property is situated in the commonwealth on the last day
26 of the taxable year and (v) such property (1) is depreciable by the
27 lessor under the section one hundred and sixty-seven of said code
28 and has a useful life of four years or more, or (2) is considered
29 recovery property under section one hundred sixty-eight of said
30 code. The commissioner shall by regulation require such docu-
31 mentation of the lessor and lessee as to substantiate the credit
32 claimed by this section.